IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2382 of 2006

to

FIRST APPEAL No.2394 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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SPL.LAQ OFFICER & ANR - Appellant(s)
Versus
HEIRS OF KRISHNALAL BEHCHAR, BABUBHAI KRISHNALAL & ANR - Respondent(s)

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Appearance :
MR SS PATEL, AGP for Appellant(s) : 1 - 2.
MR AMIT C NANAVATI for Respondent(s)-Claimant(s)

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 08/08/2006

ORAL JUDGMENT (Per: HON'BLE SMT.JUSTICE ABHILASHA KUMARI)

1. Admitted. Mr.Amit C.Nanavati, learned counsel, waives service of notice on behalf of the claimant/ claimants in each Appeal. Mr.S.S.Patel, learned Assistant Government Pleader, states at the Bar that the interest of the appellants and that of the respondent No.2 in each Appeal is identical and is not in conflict at all. On the basis of this statement, this Court is of the opinion that it is not necessary to serve the notice of admission of the Appeals upon the respondent No.2 in each Appeal. Having regard to the facts of the case, all these Appeals are taken up for final hearing today.

2. The abovenumbered Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated October 30, 2004, rendered by the 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) in Land Reference Case Nos.485 to 497 of 1999, by which, the Reference Court has awarded additional compensation at the rate of Rs.21=60 ps. per sq.mt. to the claimants for their acquired lands, over and above compensation awarded to them at the rate of Rs.1.65 ps. per sq.mt. by the Special Land Acquisition Officer.

3. A proposal was received by the State Government to acquire the lands of village Detroj, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of Narmada canal under the Narmada Project. On scrutiny of the said

proposal, the State Government was satisfied that the lands of village Detroj were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the official gazette on October 13, 1995. Having been served with notices, the land owners filed their objections against the proposed acquisition and after considering the said objections, a report was submitted by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Detroj specified in the Notification published under Section 4 of the Act were needed for the public purpose of construction of Narmada canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on September 27, 1996. The interested persons

were thereafter served with notices under Section 9 of the Act for determination of amount of compensation payable to them. After considering the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.1=65 ps. per sq.mt. by his award dated April 20, 1998. The claim put forward by the claimants for their acquired land was for Rs.25/- per sq.mt. The claimants were therefore of the opinion that the offer of compensation made by the Special Land Acquisition Officer was highly inadequate. They, therefore, submitted applications in writing requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of just compensation payable to them. In this background, References were made to the District Court, Ahmedabad (Rural) at Navrangpura, which were numbered as referred to above.

4. On behalf of the claimants, Pramukhbhai Ambalal Patel, who is the claimant in Land Acquisition Reference No.490 of 1999, was examined at Ex.34. He stated in his testimony that the acquired lands were situated near an industrial area and were to be converted into non-agricultural lands in the near future. He further stated that the acquired lands were situated in a developing area where there were facilities of telephone, school, cooperative society, hospital, electricity and minor industry such as wood saw mill, etc. According to him, the acquired lands had adequate irrigation facilities throughout the year and agriculture was being carried out with the help of latest technology. It was stated by him that the crops such as Jeera, Cotton, Wheat, Jowar, Bajri, etc. were being taken thrice annually and the lands had got good future potentialities. He further stated that vegetables were also being grown on the acquired lands and that

the claimants were earning net profits of Rs.40,000/- to Rs.50,000/- per Vigha per year from sale of agricultural produces. This witness placed reliance upon the judgment passed in Land Acquisition Case No.2206 of 1996 and cognate matters dated November 3, 1999, rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) at Mirzapur, Ahmedabad, relating to the lands of this very village, wherein compensation at the rate of Rs.18/- per sq.mt. over and above the compensation awarded by the Special Land Acquisition Officer was awarded. This judgment and award of Reference Court was produced by the witness at Ex.30. The witness further produced the judgment of the High Court in First Appeals No.4587 to 4603 of 2001 decided on October 15, 2001, at Ex.31, by which the judgment of the Reference Court referred to above was confirmed. The claimant also produced relevant documents like village form

No.7/12 etc.

5. On behalf of the acquiring body, Ambalal Bechardas Patel, who was the Deputy Executive Engineer, Narmada Yojana Main Canal, Sub-Division 22/4, Kadi, was examined at Ex.64. He stated that the acquired lands were not fertile and the claimants were not taking three crops of agricultural produce in a year and therefore, the claimants were not entitled to enhanced compensation as claimed by them. Apart from general denial of the case put forward by the claimants, nothing substantial emerged from the deposition of this witness.

6. On appreciation of the evidence adduced by the parties, the Reference Court, held that the previous award produced by the claimants, as confirmed by the High Court, furnished good guidance for determining the correct market value of the lands acquired

in the instant case from the same village, that is, Detroj. Accordingly, vide judgment and award dated October 30, 2004, the Reference Court has held that the claimants are entitled to additional compensation of Rs.21=60 ps. per sq.mt. for their acquired lands, over and above the compensation of Rs.1=65 ps. per sq.mt. awarded by the Special Land Acquisition Officer, giving rise to the instant Appeals.

7. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader, for the appellants in each Appeal and Mr.Amit C.Nanavati, learned counsel appearing for the claimant/ claimants in each appeal, at great length and in detail. This Court has also considered the documentary evidence produced by the learned counsel for the parties for perusal of the Court.

8. From the perusal of the testimony of Pramukhbhai Ambalal Patel as well as the

documents produced, it is evident that although the claimant deposed at length regarding the fertility of the acquired lands as well as crops being grown by the claimants and the income derived by them from such agricultural produce, the enhanced compensation has not been claimed on yield basis. What has been relied upon is the previous judgment and award pertaining to the acquired lands of the same village in Land Reference Case No.2206 of 1996 and cognate matters, which is produced at Ex.30. The witness for the claimants has specifically deposed that the lands which were previously acquired were adjoining to the lands which are the subject matter of the present acquisition and were similar in all respects including fertility. For acquisition of lands which were subject matter of the previous award, the Notification under Section 4 of the Act was published on April 26, 1993 and against the claim of the claimants at the rate of

Rs.35/- per sq.mt., the Special Land Acquisition Officer had awarded compensation at the rate of Rs.1=65 ps. per sq.mt. for the acquired lands. On Reference being made, the amount of compensation was enhanced to Rs.18/- per sq.mt. by the Reference Court vide judgment and award in Land Acquisition Case No.2206 of 1996 dated November 11, 1999. That judgment and award of the Reference Court was challenged by way of First Appeals No.4587 to 4603 of 2001 and the judgment of the High Court in these appeals is at Ex.31. A Division bench of the High Court comprising B.C.Patel, J. (as he then was) and Sharad D.Dave, J., vide judgment dated October 15, 2001, dismissed the abovementioned Appeals and confirmed the judgment and award rendered by the Reference Court, which has been relied upon by the claimants in the present Appeals.

9. It is relevant to notice that the

Notification under Section 4(1) of the Act in the previous award, on which reliance is placed, was published on April 26, 1993, whereas the Notification under Section 4(1) of the Act regarding acquisition of lands which are the subject matter of the present Appeals was published on October 13, 1995. Therefore, there is a difference of about two years and five months between the dates of publication of the two Notifications. It is a settled position of law that the judgment and award pertaining to the lands acquired from the same or from an adjoining village, which has attained finality, is a relevant piece of evidence and can be taken into consideration by the Court while determining the market value of the lands acquired subsequently from the same or adjoining village. In the present Appeals, the award upon which reliance is being placed relates to the same village and has also attained finality. Therefore, this Court is of the opinion that the Reference

Court has not committed any error in placing reliance on the previous award of the Reference Court relating to the lands of the same village, which has been confirmed by the High Court. By way of the previous award, the Reference Court had awarded additional compensation at the rate of Rs.18/- per sq.mt. for the acquired land. Since there is a difference of about two years and five months between the publication of Notifications under Section 4(1) of the Act, the Reference Court has taken into consideration the appreciation in price of lands and has held that the claimants in the instant case are entitled to 10% rise in price annually. On the basis of this principle, the Reference Court has awarded additional compensation at the rate of Rs.21=60 ps. per sq. mt. to the claimants for their acquired lands.

10. On a thorough re-appreciation of the evidence adduced by the parties and careful

scrutiny of materials on record, this Court is of the opinion that the Reference Court has not committed any error and is justified in placing reliance on the previous award of the Reference Court, as confirmed by the High Court, for the purpose of determining the correct market value of the lands acquired from village Detroj in the instant case. Since the findings of the Reference Court are based on correct application of facts and application of principles of law to the proved facts and as just amount of compensation has been awarded to the claimants, the impugned judgment and award does not deserve to be interfered with. No material has been placed on record nor any argument advanced by the learned Assistant Government Pleader which could indicate any error in the impugned judgment necessitating the interference of this Court in the instant Appeals. Therefore, the Appeals, being devoid of merits,

deserve dismissal.

11. For the foregoing reasons, the Appeals are dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this Judgment as expeditiously as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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